

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

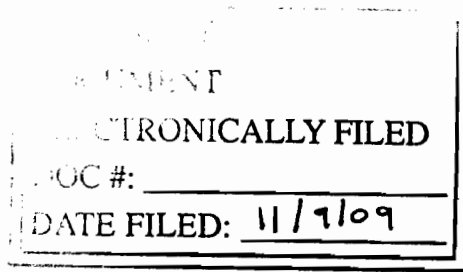
RENE CANALES, *et al.*,

Plaintiffs,

-v-

115 BROADWAY CORP, *et al.*,

Defendants.



No. 09 Civ. 4674 (RJS)
ORDER

RICHARD J. SULLIVAN, District Judge:

By order dated September 22, 2009, the Court granted Plaintiffs' motion for conditional certification of this case as a collective action pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b), and ordered that the parties provide the Court with a jointly proposed stipulated Notice of Pendency and Consent to Join the Collective Action pursuant to the FLSA (the "Notice") no later than Friday, October 16, 2009. (*See* Doc. No. 29.) By order dated October 2, 2009, the Court denied Defendants' motion for reconsideration of this order, but extended the time by which the parties were to provide the Court with the jointly proposed stipulated Notice to Friday, October 23, 2009. (*See* Doc. No. 31.) By order dated October 22, 2009, in light of Defendants' representation that new counsel was being obtained, the Court granted a second extension of time, until November 6, 2009, to submit the jointly proposed stipulated Notice. (*See* Doc. No. 36.) The September 22, 2009 order, the October 2, 2009 order, and the October 22, 2009 order *all* directed that, in addition to submitting the jointly proposed notice, Defendants shall provide Plaintiffs with the names and addresses of individuals who worked for Defendants between May 18, 2003 and the present *forthwith*. (Doc. Nos. 29, 31, 36.)

The Court is now in receipt of a letter submitted on behalf of both parties, dated November 6, 2009, as well as a jointly proposed stipulated Notice. The joint letter raises several issues. As an initial matter, the letter indicates that, despite being ordered three times to provide Plaintiffs with the names and addresses of individuals who worked for Defendants between May 18, 2003 and the present, Defendants have still failed to comply with the Court's orders. Rather, Defendants represent that they are "reviewing [the list] for completeness," and that once they are "satisfied that the list is complete, Defendants will forward it to plaintiffs' counsel — in no case later than Tuesday, November 10, 2009." It is HEREBY ORDERED, in no uncertain terms, that Defendants provide Plaintiffs with the list *forthwith*, and that failure to do so by November 10, 2009 may result in sanctions for Defendants' continued failure to abide by this Court's orders.

Second, the parties dispute whether Plaintiffs be permitted to "post" the Notice at the Defendant's business location. The Court finds that posting of such notice is proper, especially in light of Defendants' failure to timely provide Plaintiffs with the list of employees as previously ordered. Accordingly, it is HEREBY ORDERED that Plaintiff is authorized to distribute the attached Notice by both first class mail and by the posting at Defendants' business locations.

Third, Defendants represent that Asam Corp. — a Defendant recently added to this action by the amended complaint filed by Plaintiffs on October 26, 2009 (*see* Doc. No. 40) — has not yet answered or otherwise responded to Plaintiffs' amended complaint, and that its time to do so expires on November 16, 2009. In light of this fact, the terms of this order shall not apply to Asam Corp. If Plaintiff wishes to move for conditional certification of its case against Asam

Asam Corp. If Plaintiff wishes to move for conditional certification of its case against Asam Corp. or if Asam Corp. wishes to file any motion of its own, a pre-motion letter shall be submitted in accordance with my Individual Practices.

Finally, it is HEREBY ORDERED that the Court adopts the attached stipulated Notice of Pendency and Consent to Join the Collective Action pursuant to the FLSA. The Notice may be distributed as set forth in this order.

SO ORDERED.

Dated: November 9, 2009
New York, New York



RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
RENE CANALES; ALICIO ZAVALA and
ASTRID AIMEÉ ORTIZ, on behalf of themselves
and other similarly situated current and former
employees of defendants,

Plaintiffs,

09 Civ. 4674 (RJS)

-against-

115 BROADWAY CORP. d/b/a PANINI & CO.;
120 GREENWICH STREET CAFÉ CORP.
d/b/a FREDDO CAFE; and
ANGELO TZORZATOS,

Defendants.

-----X

NOTICE OF YOUR RIGHTS

To: All current or former employees of *Panini & Co., Freddo Café and/or Angelo Tzorzos* who work or have worked as cashiers, deli workers, and/or manual laborers at any time since May 18, 2003.

Re: Your right to join a lawsuit seeking to recover unpaid overtime wages under the Fair Labor Standards Act.

Date: November __, 2009.

1. WHY YOU ARE GETTING THIS NOTICE

This notice contains important information about your rights under the Fair Labor Standards Act ("FLSA") as a result of your employment by *115 Broadway Corp. d/b/a Panini & Co. ("Panini & Co."); and/or 120 Greenwich Street Café Corp. d/b/a Freddo Cafe ("Freddo Café")*. The purpose of this Notice is to tell you about the existence of a collective action lawsuit to recover unpaid wages

in which you potentially are “similarly situated” to the named plaintiffs, and to advise you of how your rights may be affected by this suit. The Notice will also tell you how to join the lawsuit if you think you are entitled to back overtime payments and want to participate.

2. DESCRIPTION OF THE LAWSUIT

This lawsuit was filed by former employees of the defendants in the United States District Court for the Southern District of New York. The name and case number of the lawsuit is *RENE CANALES; ALICIO ZAVALA and ASTRID AIMEE ORTIZ, on behalf of themselves and other similarly situated current and former employees of defendants, v. 115 BROADWAY CORP. d/b/a PANINI & CO.; 120 GREENWICH STREET CAFÉ CORP. d/b/a FREDDO CAFE and ANGELO TZORZATOS*, Case No. 09 Civ. 4674 (RJS)

The named plaintiffs claim that during their employment by the defendants, they regularly worked more than forty (40) hours per week but were not paid overtime in violation of the Fair Labor Standards Act (“FLSA”). They also claim that they were not paid an extra hour at the state minimum wage rate for days when they worked more than ten (10) hours in one day, in violation of New York Labor Law. The plaintiffs are suing defendants for unpaid overtime and “spread of hour” wages. They are also asking for “liquidated damages” (double the amount of the claimed unpaid wages) under federal law as well as attorney fees, costs, and statutory interest.

This lawsuit is currently in the discovery stage. The defendants have denied plaintiffs’ allegations that they engaged in these practices or that they are liable to plaintiffs under federal and New York law.

3. WHO CAN JOIN THE LAWSUIT

Current and former cashiers, deli-workers and/or manual laborers who worked for Panini & Co., and/or Freddo Café between May 18, 2003 and the present who were not paid at a rate of one and one half times their regular rate of pay for any overtime hours worked over 40 hours per week may be eligible to join the lawsuit.

Current and former cashiers, deli-workers and/or manual laborers who worked for the Defendants may have claims under the FLSA if they worked more than forty hours per week during the last three years and/or claims under the New York Labor Law if they worked more than forty hours per week or more than ten hours per day during the last six years. Filing a consent at this early stage of the litigation affects only the FLSA portion of the case. Only employees who worked for some time during the last three years may join the FLSA collective action at this stage.

4. HOW TO JOIN THE LAWSUIT

This Notice is to locate persons who wish to join the FLSA case and may be eligible to join the FLSA case and has no other purpose. If you fit the above definition, you may join ("opt -in") the FLSA action by mailing the Consent to Sue form.

IF YOU WOULD LIKE TO JOIN THIS LAWSUIT, you must sign and return the enclosed "Consent to Sue" form to plaintiffs' attorneys at the following address:

Beranbaum Menken LLP
Attn: Bruce E. Menken; Jennifer L. Smith
80 Pine Street, 33rd Floor
New York, New York 10005
Ph: (212) 509-1616

You can also call the plaintiffs' attorneys at 212-509-1616. A Spanish language speaker will be available to talk with you.

The Consent form must be returned within 90 days from the date of this notice, i.e. postmarked no later than February __, 2010. If you fail to return the Consent to Sue form before the deadline, you may not be able to participate in the FLSA lawsuit.

5. EFFECT OF JOINING THIS SUIT

If you choose to join in this case, you will be bound by the judgment, whether it is favorable or unfavorable to the plaintiffs. While the suit is pending, you may also be required to respond to written questions, sit for a deposition, and/or testify in court. You will also be bound by, and will share in, any settlement that may be reached on behalf of the class.

The attorneys for the class plaintiffs are being paid on a contingency fee basis, which means that if there is no recovery, the plaintiffs' attorneys will not recover a fee. If there is a recovery, the attorneys for the class plaintiffs will receive a part of any settlement obtained or money judgment entered in favor of all members of the class, as specified in the attached "Consent to Sue" form. If you sign and return the "Consent to Sue" form attached to this Notice, you are agreeing to designate the class representatives (the plaintiffs named in the caption) to make decisions on your behalf concerning the litigation, the method and manner of conducting this litigation, the entering into of an agreement with plaintiffs' counsel concerning attorney fees and costs, and all other matters pertaining to this lawsuit. These decisions and agreements made and entered into by the class representatives will be binding on you if you join the lawsuit. However, the Court has

retained jurisdiction to determine the reasonableness of any fee agreement entered into by plaintiffs with counsel, and to determine the adequacy of the plaintiffs' counsel.

6. *YOU MAY JOIN THE SUIT, BUT NOT BE REPRESENTED BY THE NAMED PLAINTIFFS*

You can join this lawsuit by representing yourself or by counsel of your own choosing. To do so, you or your attorney must file the appropriate documents with the Court. The address of the Court is: United States District Court, 500 Pearl Street, New York, New York, 10007.

7. *NO LEGAL EFFECT IN NOT JOINING THE SUIT*

If you do not wish to be part of the lawsuit, you need not do anything. If you do not join the FLSA lawsuit, you will not be part of the FLSA case in any way, and will not be bound or affected by the result, whether favorable or unfavorable to the plaintiffs. Your decision not to join this lawsuit will not affect your right to bring a similar case on your own in the future.

8. *NO RETALIATION IS ALLOWED*

It is a violation of federal law for defendants to fire, discipline, or in any manner discriminate or retaliate against you for taking part in this case.

The Court has taken no position in this case regarding the merits of the plaintiffs' claims or defendants' defenses and no determination has been made that you are owed any wages. You are under no obligation to respond to this notice.

THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK, THE HONORABLE RICHARD J. SULLIVAN, UNITED STATES DISTRICT JUDGE.

Dated: New York, New York
_____, 2009

BERANBAUM MENKEN LLP
Attorneys for Plaintiffs
By: Bruce E. Menken
80 Pine Street, 32nd Floor
New York, New York 10005
Tel. (212) 509-1616

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
RENE CANALES; ALICIO ZAVALA and
ASTRID AIMEÉ ORTIZ, on behalf of themselves
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d/b/a FREDDO CAFE; and
ANGELO TZORZATOS,

Defendants.

-----X

CONSENT TO SUE PURSUANT TO 29 U.S.C. SEC. 216 (b)

1. I wish to become a plaintiff in this action under the Fair Labor Standards Act.
2. Pursuant to 29 U.S.C. Sec. 216 (b), I hereby consent to the filing of this action.

Dated: _____

Signature: _____

Printed Name: _____

Address: _____

Telephone: _____